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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON, PETITIONER,

vs.

AARON GORDON

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

PETITION FOR CERTIORARI FILED JUNE 24, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

CHARLES F. BLACKTON, Defendant

On Contract

STATE OF DEMAND—Filed August 17, 1934

The plaintiff, Aaron Gordon, demands of the defendant the sum of $500.00 for that:

1. On or about the 9th day of January, 1934, Aaron Gordon, plaintiff herein, recovered a judgment against one Horace Findlay for the sum of $500.00 damages and $29.20 costs of suit, in this Court.

2. In accordance with the statute in such case made and provided, the plaintiff caused to be issued out of this Court on February 6th, 1934, a writ of execution against the wages of the said Horace Findlay, a copy of which writ is hereto annexed as Schedule "A" and made a part hereof, as if fully set forth herein.

3. On February 6th, 1934, the defendant, Horace Findlay was in the employ of the Erie Railroad Company, a corporation, and received wages from said Company in the amount of $100.00 every two weeks and has since said date continued in the employ of the Erie Railroad Company.

[fol. 2] 4. On February 10th, 1934, William Turner, a Constable of the County of Hudson, State of New Jersey, served the said writ of execution upon Charles F. Blackton, Superintendent of Marine Transportation, Erie Railroad Company, a corporation.

5. On February 20th, 1934, the said Erie Railroad Company advised B. Frances Marron, Clerk of the First District Court of Jersey City, that it would not honor said writ of execution served on its Superintendent of Marine Department.

6. Charles F. Blackton is a proper officer of the corporation which employs Horace Findlay.

7. Since the service of the said writ of execution to date hereof, said defendant, Horace Findlay, has received from his employers ten pays.

8. The said Erie Railroad Company, a corporation, has failed to pay over to the officer presenting said execution, the percentage of said indebtedness or pays amounting to the sum of $100.00.

9. Wherefore, in accordance with the statute in such case made and provided, the plaintiff demands judgment against the defendant, Charles F. Blackton, the sum of $100.00 together with interest and costs of suit.

Aaron Gordon, Attorney Pro se.

[fol. 3] SCHEDULE "A" TO STATE OF DEMAND

HUDSON COUNTY, ss:

(L. S.)

The State of New Jersey to the Sergeant-at-Arms of the First District Court of the City of Jersey City:

Whereas, on the 9th day of January, 1934, Aaron Gordon recovered a judgment in the First District Court of Jersey City against Horace Findlay for the sum of $529.20 damages and costs, and whereas the said judgment remains wholly unsatisfied, and the amount remaining due on said judgment is in the sum of $529.20 besides execution fees and interest from the 9th day of January, 1934, until fully paid and satisfied, and

Whereas, Horace Findlay is at present employed by the Erie Railroad Company, and has wages, debts, earnings, salary and income from trust funds or profits due and owing to him to the amount of One Hundred ($100.00) Dollars or more every two weeks, and that the same is payable to him by the said Erie Railroad Company, and the same is now due and owing to the said Horace Findlay and shall hereafter become due and owing to him; and

Whereas, an Order has been made in the cause by the said District Court on the 2nd day of February, 1934, directing the issuing of this writ, said writ to become a lien and continuing levy upon the wages, debts, earnings, salary

and income from trust funds or profits which become due to the said Horace Findlay from the said Erie Railroad Company to the amount of $10.00 every two weeks, and upon each payment of such wages, debts, earnings, salary and income from trust funds or profits due.

[fol. 4] Now, therefore, we command you that you satisfy said judgment and costs with interest thereon, together with your fees, out of the wages, debts, earnings, salary and income from trust funds or profits due to the said judgment debtor, Horace Findlay, now due to him and which shall hereafter become due and owing to him from the Erie Railroad Company, according to the statute in such case made and provided; and that this execution and levy to be made thereunder shall be a lien and continuing levy upon the wages, debts, earnings, salary and income from trust funds or profits due or to become due to the said Horace Findlay from the said Erie Railroad Company to the amount of $10.00 every two weeks until this execution and the expenses thereof are fully paid and satisfied; and that when this writ is satisfied you make return of the proceedings had thereon.

Witness, August Ziegener, Esq., Judge of the said Court, at Jersey City, aforesaid, and the seal of the Court the 6th day of February, in the year of our Lord, one thousand nine hundred and thirty-four.

B. Frances Marron, Clerk.

[fol. 5] In First District Court of Jersey City

Aaron Gordon, Plaintiff,

vs.

Horace Findlay, Defendant

Order for Execution Against Wages, etc.

The affidavit of Aaron Gordon, the above named plaintiff, having been filed herein, showing that a judgment was recovered by said plaintiff on the 9th day of January, 1934, in said cause against Horace Findlay, the above named defendant, for the sum of $529.20 damages and costs, and thereafter execution was issued thereon and has been re-

turned wholly unsatisfied and that it remains wholly unpaid; that said defendant is employed as a licensed deck officer by the Erie Railroad Company and that his wages, debts, earnings, salary and income from trust funds or profits due and owing to him amount to the sum of $100.00 or more every two weeks, and that the same is payable to him by the Erie Railroad Company, its servant or agent, and is now due and owing to him; and said affidavit having been considered:

It is on this 2nd day of February, 1934, Ordered that execution do issue against the wages, debts, earnings, salary and income from trust funds or profits due and owing to the said judgment debtor from the Erie Railroad Company, [fol. 6] and the said Erie Railroad Company is ordered to hold from the wages the sum of $10.00 every pay-day, the same amount being not more than ten per centum of the weekly pay of Horace Findlay; and that the said Erie Railroad Company be and is hereby ordered to pay the sum so held as aforesaid, to the sergeant-at-arms by whom said execution is presented until the full sum of the judgment and costs of said suit, together with costs hereof, and interest from the date of said judgment until the date of final payment, be fully paid and satisfied; and the said Erie Railroad Company, its servants and agents, are hereby restrained from paying the said money to the said defendant or to any other person than the sergeant-at-arms; and it is further ordered that the said execution from its presentation shall be a continuing lien and levy against the said wages, debts, earnings, salary and income from trust funds or profits, as the same become due, until the full amount herein specified shall be fully paid and satisfied, together with subsequent costs and charges.

August Ziegener, Judge of the First District Court of Jersey City.

[fol. 7] IN FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

HORACE FINDLAY, Defendant

AFFIDAVIT TO OBTAIN EXECUTION AGAINST WAGES, ETC.

STATE OF NEW JERSEY,
County of Hudson, ss:

Aaron Gordon, being duly sworn according to law, upon his oath, deposes and says, that he is the plaintiff and judgment creditor in the above stated cause; that on the 9th day of January, nineteen hundred and thirty-four, judgment was recovered by plaintiff in said cause against Horace Findlay, the defendant and judgment debtor for the sum of $529.20 damages and costs; that the said defendant is employed by the Erie Railroad Company, and deponent is credibly informed and verily believes that his wages, debts, salaries, income from trust funds, or profits due him amount to the sum of $100.00, he being paid every two weeks, and that the said sum of $100.00 each pay day is now due and owing to the said Horace Findlay, the judgment debtor, and will hereafter become due and owing to him.

Wherefore deponent applies for the issuance of an execution against said wages, debts, earnings, salaries, income from trust funds or profits, according to the statute in such [fol. 8] case made and provided, and states that no previous application has been made for this order.

Aaron Gordon

Sworn and Subscribed to before me this 2nd day of February, 1934. Herman Willner, An Attorney at law of New Jersey.

[fol. 9] In First District Court of Jersey City

Before August Ziegener, Esq., Judge

[Title omitted]

Docket Entries

Summons and Return

A summons was issued tested August 17, A. D. 1934, returnable August 30, A. D. 1934, at 10 o'clock in the forenoon at the Court Room of the said Court in the City of Jersey City. The constable returned the summons as follows, viz: "I served the within summons August 17, 1934, on Charles F. Blackton, the defendant, by reading the same to him and delivering to him a copy thereof."

William Turner, Constable.

[fol. 10] Plaintiffs' demand was filed August 17, 1934.

May 9, A. D. 1935, the plaintiff appearing and the defendant appearing the trial of the cause was proceeded with as follows:

Upon application of, defendant and by consent H. Richard Woebse was appointed and sworn as stenographer.

On the part of the plaintiff—Aaron Gordon, William Turner, Charles F. Blackton, and William Seaman were sworn and testified. Decision reserved. Briefs to be submitted.

On the part of the defendant—Motion for a non-suit denied on June 24, 1935.

July 15, 1935. Motion for direction of verdict denied.

Judgment

July 15, 1935. Judgment for Plaintiff, $106.00.

Whereupon it is on this fifteenth day of July, 1935, by this Court considered and adjudged that Aaron Gordon, plaintiff, recover against said Charles F. Blackton, defendant, the sum of one hundred and six dollars, debt and nine dollars and ten cents costs of suit.

July 23, 1935. Notice of appeal and Bond filed by defendant.

I, B. Frances Marron, Clerk of the First District Court of Jersey City, Frank H. Eggers, Esquire, Judge, do hereby

certify that the foregoing is a true copy of the summons, State of Demand, Garnishee, execution, and Transcript of a judgment of the said Court.

In witness whereof, I do hereby set my hand as Clerk of the said Court and affix the seal of the said Court this eighth day of August, nineteen hundred and thirty-five.

B. Frances Marron, Clerk. (Seal.)

[fol. 11] In First District Court of Jersey City

Aaron Gordon, Plaintiff,

vs.

Charles F. Blackton, Defendant

Case

Jersey City, New Jersey, May 9, 1935.

Before Hon. Frank H. Eggers, Judge

Appearances

John W. Ockford, Esq., Attorney for plaintiff.

Patrick F. McDevitt, Esq., (Collins & Corbin, Esqs., Attorney for defendant.

Aaron Gordon, the plaintiff, called as a witness on his own behalf, being duly sworn, testified as follows:

Direct examination.

By Mr. Ockford:

Q. Mr. Gordon, you are the plaintiff in this suit?

A. That is right.

Q. You are a practicing attorney of this State?

A. Yes, sir, and counselor at law.

Q. Did you obtain in this court a judgment against one Howard Findlay?

[fol. 12] A. I did. I sued Mr. Findlay for legal services pursuant to a contract that he made with me to pay me $500. I obtained a judgment by default against him. I don't recall the date, but the suit was in this court and I think the

docket or the jacket which you have there will give it to you.

Q. I show you several papers in the Court's file No. 223919, and ask you if that is the record of this court in the case wherein you obtained a judgment against Howard Findlay.

A. This (indicating) is the record of the court, the First District Court of Jersey City, of the case entitled Aaron Gordon, Plaintiff, versus Howard Findlay, Defendant.

By the Court:

Q. What was that number?

A. 223919, the court number, in which I obtained a judgment for $500 plus $59.94 costs. The date of the judgment was the 9th day of January, 1934, and it was a judgment by default.

By Mr. Ockford:

Q. Thereafter did you obtain an order directing execution against the defendant's wages?

A. I did. I obtained an order.

Q. What was the date of the issuance of the order?

A. The date of the issuance of the order is the 2nd day of February, 1934. I obtained this order for an execution against wages as distinguished from a garnishment proceeding.

Q. These (indicating) are the original papers, are they not?

A. That is right.

[fol. 13] Q. Pursuant to the order, did you issue an execution?

A. Well I—pursuant to that order I ordered—I requested the Clerk of this court to issue an execution.

Q. Do you know to whom the execution was issued?

A. The execution was issued to the Sergeant-at-Arms of the First District Court of Jersey City and by him delivered to Constable Turner, who served the same.

Q. Since the issuance of that execution, have you been paid or have you received any part of the judgment?

A. I haven't received a single penny.

Q. Did you in connection with this matter receive a letter from the defendant, Mr. Blackton?

A. I did.

Q. Will you produce it, please?

A. You have it in the file there (indicating) and I would like to add that I wrote a letter to Mr. Blackton prior to my instituting suit against him, quite some time prior.

Q. Will you produce the first letter that you received from Mr. Blackton?

Mr. McDevitt: I am going to object to counsel reading that letter.

Mr. Ockford: I just want to have it marked.

A. Here is the letter (handing paper to Mr. Ockford).

Q. This (indicating) is the letter you received?

A. Yes.

Mr. Ockford: I ask to have this letter marked for identification.

[fol. 14] (The paper referred to was marked Exhibit P-1 for identification.)

The Witness: This letter (indicating) was in reply to one which I sent.

Q. Under what date?

A. Well, I addressed the letter to the Erie Railroad Company on the 9th of January, 1934, regarding the judgment I got against Mr. Findlay.

Q. Is this (indicating) a copy?

A. Yes.

Mr. Ockford: I would like to have the copy of this letter marked for identification.

(The paper referred to was marked Exhibit P-2 for identification.)

Q. In connection with this matter, Mr. Gordon, did you ever have occasion to talk with Mr. Findlay w-th respect to his employment?

Mr. McDevitt: I admit, if your Honor please, that Mr. Findlay was employed by the Erie Railroad Company at the time that Mr. Gordon had the execution served.

The Witness: Upon the Erie Railroad Company.

Mr. Ockford: Can you agree that his rate of pay is $200 a month.

Mr. McDevitt: $215 a month, but at that time it was subject to a ten per cent cut.

Mr. Ockford: You will agree that it was at least $200 a month?

Mr. McDevitt: Yes.

[fol. 15] WILLIAM TURNER, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Ockford:

Q. Mr. Turner, I show you from the records of this court, an execution issued in the case of Aaron Gordon versus Howard Findlay, File No. 223919, and I ask you whether you as the constable had anything to do with the service of that writ.

A. Yes. This was turned over to me by Mrs. Marron on the 2nd day of February, 1934.

Q. And Mrs. Marron is the Clerk of this Court?

A. Yes.

Q. What did you do with it after it was turned over to you?

A. I went over to the Erie Railroad to see Mr. Blackton and I served a copy of the writ on Mr. Blackton representing the Erie Railroad.

Q. How did you select Mr. Blackton?

A. I was directed to Mr. Blackton by the superintendent of the Erie Terminal.

Q. In other words, you first went to the superintendent in charge of the whole Terminal?

A. Yes.

Q. And then you were sent to Mr. Blackton as being the superintendent of what department?

A. Of the Marine Department.

Q. Did you present the paper to Mr. Blackton?

A. I did.

Q. And explain it to him?

A. I did.

Q. What, if anything, did he say?

A. He said he would send it to the Legal Department.

Q. Thereafter, did you receive a letter which is in the file dated February 20, 1934, from the Erie Railroad with respect to this execution?

A. I did. It is with the copy of the return.

[fol. 16] Q. You attached it to your return and you filed it in this court file with the papers?

A. That is right.

Q. Was any part of the money demanded under the execution paid to you or collected by you?

A. No, sir.

Mr. Ockford: I desire to offer in evidence, if your Honor please, the record in the case of Aaron Gordon, Plaintiff, versus Howard Findlay, Defendant, No. 223919.

Mc. McDevitt: May I see it first, please?

Mr. Ockford: Yes, (handing paper to Mr. McDevitt). This is the state of demand and the summons. The jacket shows judgment for plaintiff in the sum of $500 and $29.24 costs. It also contains the order, dated February 2, 1934, directing the issuance of an execution against the judgment debtor's wages in the sum of $10.00 every pay day, which is every two weeks. Also the affidavit upon which the order was allowed and the execution referred to in the last witness's testimony, and the letter from the Erie Railroad Company in response thereto.

— McDevitt: Will you let me see the letter from the Erie Railroad Company, please?

Mr. Ockford: Yes, addressed to the Clerk of the court attached to the execution and as a part of the return.

Mr. McDevitt: No objection to any of the papers.

(The papers referred to were received in evidence and marked as one exhibit, Exhibit P-3.)

[fol. 17] CHARLES F. BLACKTON, the defendant, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Ockford:

Q. Mr. Blackton, you are connected with the Erie Railroad?

A. Yes, sir.

Q. What is your position there?

A. Superintendent of the Marine department.

Q. Where is your headquarters?

A. At the foot of Pavonia Avenue, Jersey City.

Q. You are the Charles F. Blackton, are you not, who was served with the execution in this Findlay case?

A. Yes, sir.

Q. And after it was served upon you, did you thereafter deduct any part of the defendant's wages?

A. No, sir.

Q. I show you a letter dated January 10, 1934, and ask you if you wrote that letter.

A. Yes, sir.

Q. You wrote that in response to a letter from Mr. Gordon, did you not?

A. Yes, sir.

Mr. Ockford: I now offer the letter in evidence.

Mr. McDevitt: May I see it? I haven't read it yet.

Mr. Ockford: Surely.

Mr. McDevitt: I have no objection to the letter being offered in evidence.

(The paper referred to, having previously been marked "Plaintiff's Exhibit 1 for identification," was received in evidence and marked Plaintiff's Exhibit 1.)

Mr. Ockford: May I read this letter to your Honor?

[fol. 18] The Court: Yes.

Mr. Ockford: It is a letter on the stationery of the Erie Railroad Company. It reads as follows:

"Mr. Aaron Gordon:

"Receipt is acknowledged of your letter dated January 9th relative judgment of $500 and costs against Howard Findlay who is employed by this company as a tug boat captain. We will have Mr. Findlay call at your office to talk the matter over with you, but as a matter of information we beg to advise that Mr. Findlay is a licensed deck officer on a United States registered vessel, and under the terms of the La Follette Act his wages cannot be garnisheed."

By Mr. Ockford:

Q. At this time of this proceeding, Mr. Blackton, just what position, if any, did Mr. Findlay hold with the company?

A. Findlay at that time was captain on the Tug Boat "Waverly."

Q. And from that time on down to the present time he has continued to be employed by the Erie?

A. Not entirely as captain. On account of reduction of forces he has been back as mate and captain, on account of the depression.

Q. But he has been employed as either captain or mate?

A. Either captain or mate.

Q. On an Erie tug boat?

A. Yes.

Q. And has his employment been on the one tug boat or did he shift from tug to tug?

A. Sometimes they shift from tug to tug.

[fol. 19] Q. These tugs are under your jurisdiction?

A. Yes, sir.

Q. And Mr. Findlay is under your orders?

A. Yes, sir.

Q. This Tug "Waverly" is a typical tug of the Road.

A. Yes, sir.

Q. It is not an ocean-going tug?

Mr. McDevitt: Please don't lead the witness.

Q. (Continuing.) What kind of tug is the "Waverly" and the other tugs upon which Mr. Findlay works from time to time?

A. They are regular harbor tug boats.

Q. Generally speaking from point to what point do these boats operate?

A. Well, any place in New York Harbor, in the lighterage limits of New York Harbor. That would be from Edgewater here to Harlem, Brooklyn and Bayonne. It is a large tug and could go to sea.

Q. Where does th- Erie have its tugs stationed when they are not going out?

A. Dock 4, Jersey City, and at Weehawken.

Q. And the Erie also has terminals in New York City?

A. Yes.

Q. At what point?

A. Duane Street, New York. Do you want them in New York?

Q. Yes.

A. Twenty-eighth Street, New York, Pier 7, East River, Wallabout, 149th Street, Harlem River.

Q. And below Bayonne how far do the tugs go?
A. Oh, they go out to Port Ivory, Staten Island.
Q. Do they go to Perth Amboy?
A. No, they wouldn't go to Perth Amboy.
[fol. 20] Q. Do they go into Elizabeth or Newark?
A. They are licensed to go there but we don't have any business down that way.
Q. Hackensack River and the Passaic River?
A. No.
Q. They do at times?
A. No, they don't.
Q. Has this Tug "Waverly" a place where it is assigned when not in actual operation?
A. Yes.
Q. Where is its berth?
A. The Marine Yard, Weehawken.
Q. Mr. Findlay does not live on the boat, does he?
A. No, sir.
Q. Do you know wh-re he lives, as a matter of fact, in what town?
A. I think he lives in Jersey City.
Q. Generally what are his hours of duty?
A. His hours of duty are from four to twelve - four p. m. to twelve p. m.
Q. He reports for duty at Jersey or Weehawken?
A. Yes, Jersey City.
Q. He goes off duty?
A. Twelve p. m.
Q. At midnight at Jersey City or Weehawken?
A. That is right, Dock 8 in Jersey City.

Cross-examination.

By Mr. McDevitt:

Q. You said that you did not deduct any money from the pay of Mr. Findlay in accordance with the order of the court that was served upon you?
A. Yes.
Q. You didn't deduct any money?
A. No, I didn't.
Q. You are in charge of that particular department and Mr. Findlay works under you, doesn't he?
A. Yes.

[fol. 21] Q. Do you know who is the treasurer of the Erie Railroad?

A. Yes.

Q. Who is?

A. Mr. J. G. Walsh.

Q. Where is the office located?

A. Cleveland, Ohio.

Q. How does Mr. Findlay get paid at the time this execution was served upon him?

A. By check received from Cleveland, Ohio.

Q. By check from Cleveland, Ohio, payable to his order?

A. To his order.

Q. Do these payroll checks come to your department for the different men in your department?

A. Yes.

Q. Did you hand them out or did the men call for them?

A. The men called for them. We handed them to them as they came in.

Q. They passed through your department?

A. Yes, sir.

Q. This tug "Waverly" is a United States registered tug?

A. Yes, sir.

William Seaman, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Ockford:

Q. Where do you live, Mr. Seaman?

A. Wayne Street, Jersey City.

Q. What number?

A. 446.

Q. You have an official position in this county, have you not?

A. Yes, sir.

Q. What is your position?

A. Harbor Master of Hudson County.

[fol. 22] Q. Is that a state or a county position.

A. It is an appointment made by the Governor.

Q. And you are assigned for the county is that it?

A. For the county.

Q. How long have you been harbor master?

A. About four y-ars.

Q. You are familiar with the harbors and ports of Hudson County, are you not?

A. Yes, sir.

Q. In what specific places do you have jurisdiction over in respect to your duties?

A. Why, the law gives me jurisdiction over the harbors of the county.

Q. Just mention the principal ones, please.

A. Jersey City, Hoboken, Edgewater and Bayonne.

Q. Is Weehawken one of them?

A. Yes.

Q. And each of these places are separate ports, are they not, within your jurisdiction?

A. Yes, sir.

Q. They are all in New Jersey?

A. Yes.

(Plaintiff rested.)

MOTION FOR NON-SUIT

Mr. McDevitt: At this time, if your Honor please, I respectfully move for a non-suit in behalf of the defendant Charles F. Blackton on the following grounds:

1. That the subject matter of this suit is maritime, and inasmuch as Congress has the paramount power to fix and determine maritime laws which will prevail throughout the country, the State statutes are without effect.

[fol. 23] 2. That the execution for wages is directed against the Erie Railroad Company. That is the general situation contained in the state of demand and the affidavits attached thereto. It is not directed against this defendant. Consequently, this defendant is not the proper party to this suit.

3. That the evidence before this Court fails to show that this defendant is the proper officer of the Erie Railroad Company who failed or refused to pay the amount of the indebtedness to the officer, that is the constable, who presented the execution.

4. That Section 601 of the United States Code Annotated exempts seamen from executions.

Section 601 reads as follows:

(Quoting Section 601.)

(After hearing argument on the motion for non-suit, the Court stated that it reserved its decision on the motion and asked both sides to submit briefs.)

[fol. 24] July 15, 1935. Eleven a. m.

(Office of Frank H. Eggers, 26 Journal Square, Jersey City, New Jersey.)

Present:

Frank H. Eggers, J.
Aaron Gordon, Patrick F. McDevitt.

(James S. Slavin was sworn as stenographer.)

Mr. McDevitt: If your Honor will recall, this matter was tried before you on May 9, 1935. Briefs were then submitted. Subsequently, counsel was notified on June 24——

The Court: It was tried before me and a motion for non-suit was made and you agreed to submit it on that.

Mr. McDevitt: That is right. On June 24 counsel was notified that the motion for a non-suit on May 9 was denied. I would like to take an exception to the Court's refusal to grant the non-suit.

The Court: I grant an exception.

MOTION FOR DIRECTION OF VERDICT

Mr. McDevitt: Defendant rests, and at this time I respectfully move for a direction of a verdict for the same reasons urged in the application for a non-suit.

[fol. 25] Mr. Gordon: The same argument advanced by the plaintiff in opposition to the motion for a non-suit is advanced in opposition to this motion for a direction of a verdict.

The Court: I will deny the motion for a direction of a verdict.

Mr. McDevitt: Your Honor will allow me an exception.

Mr. Gordon: May I ask your Honor then to enter judgment for the sum of $100 plus interest thereon from July 10, 1934, to date, amounting to $6.

The Court: On how much?

Mr. Gordon: $100 is the amount——

The Court: I thought it was five hundred.

Mr. Gordon: No, it wasn't five hundred because I had to sue each time as the money became due.

The Court: All right.

Mr. McDevitt: $106.

The Court: Judgment will be entered for the plaintiff in the sum of $106 and costs.

Mr. Gordon: A hundred dollars plus six per cent per annum interest on said sum from July 10, 1934, to date. The interest amounts to $6.

The Court: Judgment for the plaintiff for $106.

[fol. 26] Certification of stenographers omitted in printing.

CERTIFICATION OF JUDGE

I, Frank H. Eggers, Judge of the First District Court of the City of Jersey City, County of Hudson, State of New Jersey, do hereby certify that the foregoing is a transcript of the evidence given upon the trial of the case of Aaron Gordon, plaintiff, vs. Charles F. Blackton, defendant, on the [fol. 27] ninth day of May, 1935, and the fifteenth day of July 1935, as certified to by H. Richard Woebse and James S. Slavin, the stenographers appointed to report such evidence stenographically.

July 22, 1935.

Frank H. Eggers.

EXHIBIT P-1

Erie Railroad Company,

New York District,

Jersey City, N. J.

January 10th, 1934.

C. F. Blackton, Supt. Marine Transportation. Mr. Aaron Gordon, 591 Summit Ave., Jersey City, N. J.

DEAR SIR:

Receipt is acknowledged of your letter dated January 9th relative judgment of $500.00 and costs against Horace Findlay who is employed by this Company as a Tugboat Captain.

We will have Mr. Findlay call at your office to talk the matter over with you, but as a matter of information, beg to advise that Mr. Findlay is a licensed deck officer on a U. S. S. Registered vessel and under the terms of the Laffollate Act, his wages cannot be garnisheed.

Very truly yours, C. F. Blackton.

[fol. 28] EXHIBIT P-3(a)

FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

HORACE FINDLAY, Defendant

On Contract

STATE OF DEMAND

Plaintiff demands of the defendant the sum of Five Hundred ($500.00) Dollars for that:

1. On or about the 24 day of April, 1930, the defendant retained the plaintiff to represent his brother, John Findlay, at the trial of an indictment for robbery returned by the Grand Inquest in and for the County of Hudson, against the defendant's brother, John Findlay, and for his services as such, the said defendant agreed to pay to the plaintiff the sum of Five Hundred ($500.00) Dollars.

2. The plaintiff represented the said defendant's brother at his trial under such indictment for robbery before the Hudson County Court of Quarter Sessions.

3. On the 6th day of November, 1933, the said defendant not having paid any part of such sum of Five Hundred ($500.00) Dollars theretofore to the plaintiff, came to the plaintiff's law office at No. 880 Bergen Avenue, in the City of Jersey City, County of Hudson and State of New Jersey and retained the plaintiff to act as counsel for his said brother John Findlay, in connection with an indictment for robbery returned against his said brother by the Grand Inquest in and for the County of Essex and in consideration of the [fol. 29] plaintiff's agreement to represent his said brother in con-ection with the said latter indictment, without any additional charge, the said defendant agreed to pay the said sum of Five Hundred ($500.00) Dollars, which was long past due, to the plaintiff, reducing the said agreement to writing.

4. The plaintiff thereupon proceeded under the said agreement to obtain the release of the said defendant's brother, John Findlay from the Essex County Jail, where he was held under such latter indictment, obtaining the release of the said accused in the plaintiff's custody.

5. The said plaintiff thereupon made demands on the defendant for the payment of said sum of Five Hundred ($500.00) Dollars, but the defendant has repeatedly refused and neglected to pay the same and the said sum of Five Hundred ($500.00) Dollars is now justly due and owing to the plaintiff from the defendant.

6. The plaintiff is an Attorney and Counsellor at Law of New Jersey, duly admitted to practice as such by the New Jersey Supreme Court and the said sum of Five Hundred ($500.00) Dollars is due to the plaintiff under such agreement as and for his legal services hereinbefore mentioned.

Judgment will, therefore, be demanded in the sum of Five Hundred ($500.00) Dollars together with lawful interest and costs of this suit.

Aaron Gordon, Attorney Pro Se.

[fol. 30] EXHIBIT P-3(b)

FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

HORACE FINDLAY, Defendant

AFFIDAVIT TO OBTAIN EXECUTION AGAINST WAGES, ETC.

STATE OF NEW JERSEY,
County of Hudson:

Aaron Gordon, being duly sworn, according to law, upon his oath, deposes and says, that he is the plaintiff and judgment creditor in the above stated cause; that on the 9th day of January, nineteen hundred and thirty-four, judgment was recovered by plaintiff in said cause against Horace Findlay, the defendant and judgment debtor for the sum of $529.20 damages and costs; that the said defendant is employed by the Erie Railroad Company, and deponent is credibly informed and verily believes that his wages, debts, salaries, income from trust funds, or profits due him amount to the sum of $100.00, he being paid every two weeks, and that the said sum of $100.00 each pay day is now due and owing to the said Horace Findlay, the judgment debtor and will hereafter become due and owing to him.

Wherefore deponent applies for the issuance of an execution against said wages, debts, earnings, salaries, income from trust funds or profits, according to the statute in such [fol. 31] case made and provided, and states that no previous application has been made for this order.

Aaron Gordon.

Sworn and subscribed to before me this 2nd day of February, 1934. Herman Williner, An Attorney at Law, of New Jersey.

EXHIBIT P-3(c)

FIRST DISTRICT COURT OF JERSEY CITY

AARON GORDON, Plaintiff,

vs.

HORACE FINDLAY, Defendant

ORDER FOR EXECUTION AGAINST WAGES, ETC.

The affidavit of Aaron Gordon, the above named plaintiff, having been filed herein, showing that a judgment was recovered by said plaintiff on the 9th day of January, 1934, in said cause against Horace Findlay, the above named defendant, for the sum of $529.20 damages and costs, and thereafter execution was issued thereon and has been returned wholly unsatisfied and that it remains wholly unpaid; that said defendant is employed as a licensed deck officer by the Erie Railroad Company and that his wages, [fol. 32] debts, earnings, salary and income from trust funds or profits due and owing to him amount to the sum of $100.00 or more every two weeks, and that the same is payable to him by the Erie Railroad Company, its servant or agent and is now due and owing to him; and said affidavit having been considered:

It is on this 2nd day of February, 1934, ordered, that execution do issue against the wages, debts, salary and income from trust funds or profits due and owing to the said judgment debtor from the Erie Railroad Company, and the said Erie Railroad Company is ordered to hold from the wages the sum of $10.00 every pay day, the said amount being not more than ten per centum of the weekly pay of Horace Findlay; and that the said Erie Railroad Company be and is hereby ordered to pay the sum so held as aforesaid, to the sergeant-at-arms by whom said execution is presented until the full sum of the judgment and costs of said suit, together with costs hereof, and interest from the date of said judgment until the date of final payment, be fully paid and satisfied; and the said Erie Railroad Company, its servants and agents, are hereby restrained from paying the said money to the said defendant or to any other person than the sergeant-at-arms; and it is further ordered that the said execution from its presentation shall be a con-

tinuing lien and levy against the said wages, debts, earnings, salary and income from trust funds or profits, as the same become due, until the full amount herein specified shall be fully paid and satisfied, together with subsequent costs and charges.

August Ziegener, Judge of the First District Court of Jersey City.

[fol. 33] EXHIBIT P-3(d)

Schedule "A"

HUDSON COUNTY, ss:

The State of New Jersey to the Sergeant-at-Arms of the First District Court of Jersey City;

Whereas, on the 9th day of January, 1934, Aaron Gordon recovered a judgment in the First District Court of Jersey City against Horace Findlay for the sum of $529.20 damages and costs, and whereas the said judgment remains wholly unsatisfied, and the amount remaining due on said judgment is in the sum of $529.20 besides execution fees and interest from the 9th day of January, 1934, until fully paid and satisfied; and

Whereas, Horace Findlay is at present employed by the Erie Railroad Company, and has wages, debts, earnings, salary and income from trust funds or profits due and owing to him to the amount of One Hundred ($100.00) Dollars or more every two weeks, and that the same is payable to him by the said Erie Railroad Company, and the same is now due and owing to the said Horace Findlay and shall hereafter become due and owing to him; and

Whereas, an Order has been made in the cause by the said First District Court on the 2nd day of February, 1934, directing the issuing of this writ, said writ to become a lien and continuing levy upon wages, debts, earnings, salary and income from trust funds or profits which become due to the said Horace Findlay from the said Erie Railroad Company to the amount of $10.00 every two weeks, and upon each payment of such wages, debts, earnings, salary and [fol. 34] income from trust funds or profits due.

Now, therefore, we command you that you satisfy said judgment and costs with interest thereon, together with

your fees, out of the wages, debts, earnings, salary and income from trust funds or profits due to the said judgment debtor, Horace Findlay, now due to him and which shall hereafter become due and owing to him from the Erie Railroad Company, according to the statute in such case made and provided; and that this execution and levy to be made thereunder shall be a line and continuing levy upon the wages, debts, earnings, salary and income from trust funds or profits due or to become due to the said Horace Findlay from the said Erie Railroad Company to the amount of $10.00 every two weeks' until this execution and the expenses thereof are fully paid and satisfied; and that when this writ is satisfied you make return of the proceedings had thereon.

Witness, August Ziegener, Esq., Judge of the said Court, at Jersey City, aforesaid, and the seal of the Court the 6th day of February, in the year of our Lord, one thousand nine hundred and thirty-four.

B. Frances Marron, Clerk.

[fol. 35] EXHIBIT P-3(e)

Erie Railroad Company

New York, Susquehanna & Western Railroad Co.

The New Jersey and New York Railroad Co.

Chicago and Erie Railroad Co.

Midland Building

191 Prospect Ave., N. W.

Cleveland, Ohio

Office of the Treasurer

J. G. Walsh, Treasurer. E. F. Morgenroth, Asst. Treas.

February 20th, 1934.

B. Frances Marron, Clerk, First District Court, Jersey City, N. J.

DEAR MADAM:

Referring to garnishee execution issued in the First District Court of Jersey City, on February 6th, 1934, in the matter of Aaron Gordon vs. Horace Findlay:

This defendant is employed as Captain on a United States Registered vessel in our Marine Department, and under the provisions of Section 601 of the United States Code, Annotated; his wages are exempt from attachment or arrestment. We must, therefore, decline to honor the execution, which is returned herewith.

Yours truly, (Signed) J. G. Walsh, (S) Treasurer.

[fol. 36] In First District Court of Jersey City

Aaron Gordon, Plaintiff,

vs.

Charles F. Blackton, Defendant

Notice of Appeal—Filed July 23, 1935

To Aaron Gordon, Esq., Attorney of Plaintiff.

Sir:

Please take notice, that the defendant Charles F. Blackton, hereby appeals to the New Jersey Supreme Court from the judgment of the First District Court of the City of Jersey City, granted in the above stated cause on the 15th day of July, 1935.

Dated July 19, 1935.

Respectfully, Collins & Corbin, Attorneys of Defendant.

(Service acknowledged July 24, 1935.)

Aaron Gordon, Attorney of Plaintiff.

[fol. 37] In Supreme Court of New Jersey

Aaron Gordon, Plaintiff-Appellee,

vs.

Charles F. Blackton, Defendant-Appellant

On Appeal from the First District Court of Jersey City

Specifications of Determinations and Directions Appealed from—Filed August 22, 1935

Charles F. Blackton, defendant-appellant herein, writes down his Specifications of Determinations and Directions

of the First District Court of Jersey City with respect to which he is dissatisfied in point of law:

1. The trial court erred in refusing to enter a judgment of non-suit in favor of the defendant and against the plaintiff when thereunto moved, whereas said motion should have been granted for one or more of the following reasons urged in support thereof:

(a) That the subject matter of the action is maritime in nature and Congress has the paramount power to fix and determine maritimes laws which prevail throughout the country and the state statute is without effect;

(b) That the execution for wages was directed to the Erie Railroad Company, a corporation, and this defendant, Charles F. Blackton, was not a proper party to the suit;

[fol. 38] (c) That the evidence before the court failed to show that Charles F. Blackton was the proper officer of the Erie Railroad Company who failed or refused to pay the amount of the indebtedness to the constable of the First District Court of Jersey City who presented the execution;

(d) That under the provisions of Section 601 set forth in Title 46 of the United States Code, Annotated, the wages of seamen are exempt from execution. Section 601 provides:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this chapter. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, That nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915, c. 153, Sec. 12, 38 Stat. 1169.)"

[fol. 39] 2. The trial court erred in refusing to direct a verdict in favor of the defendant and against the plaintiff when thereunto moved, whereas said motion should have been granted for one or more of the following reasons urged in support thereof:

(a) That the subject matter of the action is maritime in nature and Congress has the paramount power to fix and determine maritime laws which prevail throughout the country and the state statute is without effect;

(b) That the execution for wages was directed to the Erie Railroad Company, a corporation, and this defendant, Charles F. Blackton, was not a proper party to the suit;

(c) That the evidence before the court failed to show that Charles F. Blackton was the proper officer of the Erie Railroad Company who failed or refused to pay the amount of the indebtedness to the constable of the First District Court of Jersey City who presented the execution.

(d) That under the provisions of Section 601 set forth in Title 46 of the United States Code, Annotated, the wages of seamen are exempt from execution. Section 601 provides:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or ap-
[fol. 40] prentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this chapter. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, That nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915 c. 153, Sec. 12, 38 Stat. 1169.)"

Collins & Corbin, Attorneys for Defendant-Appellant.

[fol. 41] In Supreme Court of New Jersey, October Term, 1935

No. 415

Aaron Gordon, Plaintiff-Appellee,

vs.

Charles F. Blackton, Defendant-Appellant

Submitted October 11, 1935. Decided August 27, 1936

Syllabus

1. Seamen engaged in ordinary coastwise trade held not entitled to exemption from execution against wages (42 U. S. C. A. Sections 544, 601).

2. The defendant Blackton was the agent of the Erie Railroad Company and head of its department in which the judgment debtor was employed. The superintendent of the corporation directed the constable to the defendant when he went to serve the plaintiff's execution against wages. The employee's pay checks cleared through defendant's hands. Defendant was served with the execution and accepted service. The Treasurer and principal disbursing officer of the corporation ratified such service as correct by acknowledging it and acting with respect thereto. Neither defendant nor the Treasurer of the corporation raised any question of the propriety of the service, but both [fol. 42] declined to honor the execution alleging as their only reason therefor that the wages of the employee were exempt from execution; Held, that, under Chapter 204 P. L. 1924, the defendant Blackton was the proper defendant and was liable to the judgment creditor.

On Appeal from First District Court of Jersey City

Before Justices Trenchard, Heher and Perskie

For the defendant-appellant, Collins & Corbin, (Edward A. Markley and Patrick F. McDevitt, of Counsel).

For the plaintiff-appellee, Aaron Gordon (John W. Ockford, of Counsel).

OPINION—Filed August 27, 1936

The opinion of the Court was delivered by

TRENCHARD, J.:

This is defendant's appeal from plaintiff's judgment, entered by the judge sitting without a jury, based upon defendant's failure to honor an execution against wages.

Plaintiff has a judgment and execution against one Findlay, an employee of the Erie Railroad Company, which execution was not honored. Hence this suit. The substantial question is whether the employee's wages are exempt under the Federal statute. Appellant contends they are and appellee contends that they are not.

We think that the wages of Findlay, a seaman engaged in the coastwise trade, are not exempt from execution.

It appears that Findlay, the judgment debtor, was and is employed either as "captain or mate" on a tug boat of [fol. 43] the Erie Railroad Company which plies in and about the Hudson River, both in the North River and East River branches thereof, along both sides of the River and crossing the River from New Jersey to New York and Brooklyn and vice-versa. The Hudson River and its two branches, the North River and East River, are navigable and are a part of New York Harbor. He was and is, therefore, engaged in the coastwise trade. The cases support this conclusion. Some of these are: Ravesies vs. U. S. 37 Fed. 447; Leary vs. Jersey City, 189 Fed. 419; Gibbons vs. Ogden, 9 Wheaten (U. S.) 1; Pacific Milling Co. vs. Portland, 133 Pacific 72. Thus in the case of Gibbons vs. Ogden, supra, Chief Justice Marshall said: "The coasting trade is a term well understood. The law has defined it; and all know its meaning perfectly. The act describes, with great minuteness, the various operations of a vessel engaged in it; and it cannot, we think, be doubted, that a voyage from New Jersey to New York, is one of these operations." In the Ravesies case it was said that the words "coasting trade" and "coastwise trade" were used synonymously. In Leary vs. Jersey City, supra, it was stated that "A harbor is a port or haven for ships, a sheltered recess in the coast line of a sea, gulf, bay, or lake, most frequently at the mouth of a river. * * *." In Pacific Milling Co. vs. Portland, supra, it was declared that "the word 'sea' has been held to mean 'not only high-sea,

but arms of the sea, waters flowing from it into ports and havens, and as high upon rivers as the tide ebbs and flows'."

Now Findlay, being engaged in the coastwise trade (and we assume as a seaman) cannot claim the exemption allowed seamen because, as appellee contends, Section 544 [fol. 44] of the U. S. Code, Title 46 expressly takes seamen engaged on vessels in the coastwise trade out of the exemption and in fact limits Section 601 to seamen engaged between east coast, west coast or foreign trade. Duggar vs. Mobile & Gulf Co., 140 Southern 611 and 614 (2 decisions); Inter-Island Co. vs. Byrne, 239 U. S. 459, 36 S. Ct. Rep. 132, 60 L. Ed. 382. Such was the conclusion reached in those cases after a discussion and consideration of the exemption originally given by Act of Congress June 7, 1872, Section 61 (17 Stat. 276) to wages due to seamen, in view of the Act of Congress June 9, 1874 (18 Stat. 64, 46 U. S. C. A. Section 544). And we believe those cases amply support appellee's contention as to the limitation placed by Section 544 on Section 601. A complete recital of the historical development of the two sections and interpretive decisions is furnished by the Court in the Duggar case, 140 Southern 611. The earlier history is explained in Wilder vs. Inter-Island Nav. Co., 211 U. S. 239 and Inter-Island Co. vs. Byrne, 239 U. S. 459.

In the Duggar case the Court of Appeals of Alabama, by the decision rendered October 27, 1931, reviewed the entire history of legislation which culminated in Sections 544 and 601 of United States Code. The plaintiff in that suit sought to garnishee the wages paid by the Mobile & Gulf Navigation Co., to one Tindel, judgment-debtor, Tindel being employed by the Navigation Company as a pilot or mate on one of its vessels or tugs plying on the Alabama River and Mobile River. The Navigation Company set forth Section 601 as its basis for refusing to honor the execution. The Court held that Section 544 above mentioned, limited the application of Section 601 to seamen engaged in coast to coast or United States to Foreign Port trade and hence held the ganishment was effective as [fol. 45] against the wages of Tindel whose employment did not fall within the class of seamen engaged in coast to coast or United States to Foreign Port Trade. The exact basis of the decision is correctly set forth in the head note thus: "Seamen engaged in ordinary coastwise or river

trade are not entitled, under 46 U. S. C. A. § 601, to the exemption originally given by Act Cong. June 7, 1872, § 61 (17 Stat. 276) to wages due or accruing to any seaman or apprentice, since Act. Cong. June 9, 1874 (18 Stat. 64) (46 U. S. C. A. § 544), subsequently passed, provided that none of the provisions of the previous act should apply to sail or steam vessels engaged in the coastwise trade, with specified exceptions, and the limitation, as well as the original exemption, was preserved in revisions, and was carried forward into the codification known as the United States Code, after decisions had construed the exemption as not applying to wages of seamen engaged in ordinary coastwise trade." That decision is precisely in point here.

The only other point made by the appellant is that the evidence failed to show that Blackton was the proper defendant to this suit, in that the statute provides for a suit against the agent or any other proper officer.

We see no merit in this point.

This action was instituted pursuant to Chapter 204 of Laws of 1924, Section 12, p. 432), a supplement to the District Court act. That section discloses that it applies not only to an individual, but to a corporation which is, or may become, indebted to a judgment debtor, and it provides in the case of such a corporation that "it shall be the duty of any * * * agent, treasurer, or other fiduciary officer * * * to whom said execution shall be pre-
[fol. 46] sented" to pay over under the execution; and "if such * * * or the proper officer * * * to whom said execution shall be presented shall fail or refuse to pay * * * he shall be liable to an action therefor by the judgment creditor * * *."

It will be seen thereby that the act merely requires service of the writ on "agent, treasurer or other fiduciary officer of a * * * corporation" and if such a one to whom the execution is presented shall fail or refuse to pay, he shall be liable.

Now the evidence tended to show that Blackton is the agent of the Erie Railroad Company as head of its Marine Department, the department in which Findlay, the judgment debtor, was employed. Blackton was the man to whom the constable was directed by the superintendent of the Erie Terminal when he went to serve the writ. Findlay's pay checks cleared through Blackton's hand; he was

Findlay's boss; he was served with the execution and accepted service. The defendant Blackton was the person designated by the principal official at the Erie Terminal in Jersey City to receive the writ. The Treasurer and principal disbursing officer of the Erie Company ratified the service as being correct by acknowledging such service and acting with respect thereto. Neither the superintendent, nor Blackton himself, nor the Treasurer of the Erie Railroad raised any question of the propriety of the service, but both Blackton and the Treasurer declined to honor the execution alleging as their only reason therefor that the wages of Findlay were exempt from execution.

We conclude that the defendant Blackton was the proper defendant and was liable to the judgment creditor.

The judgment will be affirmed, with costs.

[fol. 47] In Supreme Court of New Jersey

Aaron Gordon, Plaintiff-Appellee,

vs.

Charles F. Blackton, Defendant-Appellant

On Appeal from First District Court of Jersey City

Judgment of Affirmance—Entered September 10, 1936

This cause having been duly submitted on briefs at the October Term, 1935, of this Court by Collins & Corbin, Edward A. Markley and Patrick F. McDevitt, of counsel for the appellant, and Aaron Gordon and John W. Ockford, of counsel for appellee, and the Court having considered the record and judgment below and the specifications of determinations with which appellant was dissatisfied in point of law, and finding no error in the record and judgment of the Court below:

It is thereupon, on this 10th day of September 1936, ordered and adjudged that the judgment of the First District Court of Jersey City, appealed from in this case, be affirmed with costs to be paid by the appellant; and that the record be remitted to the First District Court of Jersey City

to be proceeded with in accordance with this judgment and the practice of said Court.

Entered Sept. 10, 1936.

On motion of Aaron Gordon, Attorney for Appellee.

(Service acknowledged Sept. 14, 1936.)

[fol. 48] In Supreme Court of New Jersey

[Title omitted]

Notice of Appeal—Filed September 25, 1936

To Aaron Gordon, Esquire, Attorney for Plaintiff, 591 Summit Avenue, Jersey City, N. J.

Sir:

Take notice that the defendant, Charles F. Blackton, appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause.

Dated September 24, 1936.

Respectfully, Collins & Corbin, Attorneys for Defendant.

(Served September 24, 1936.)

[fol. 49] In Court of Errors and Appeals of New Jersey

[Title omitted]

Grounds of Appeal—Filed October 23, 1936

To Aaron Gordon, Esq., 358 Central Avenue, Jersey City, N. J., Attorney for Plaintiff-Respondent.

Sir:

The defendant-appellant, Charles F. Blackton, writes down the following grounds of appeal:

The Supreme Court erred in affirming the judgment of the First District Court of Jersey City, whereas said Supreme Court should have reversed the judgment of the First Dis-

trict Court of Jersey City for one or more of the following reasons urged in support of said reversal:

(a) That the subject matter of the action is maritime in nature and Congress has the paramount power to fix and determine maritime laws which prevail throughout the country and the state statute is without effect;

(b) That the execution for wages was directed to the Erie Railroad Company, a corporation, and this defendant, Charles F. Blackton, was not a proper party to the suit;

[fol. 50] (c) That the evidence before the Court failed to show that Charles F. Blackton was the proper officer of the Erie Railroad Company who failed or refused to pay the amount of the indebtedness to the constable of the First District Court of Jersey City who presented the execution;

(d) That under the provisions of Section 601 set forth in Title 46 of the United States Code, Annotated, the wages of seamen are exempt from execution. Section 601 provides:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any Court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this chapter. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, that nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915, c. 153 Sec. 12, 38 Stat. 1169.)"

Dated October 22, 1936.

Respectfully, Collins & Corbin, Attorneys for Defendant-Appellant.

(Served October 22, 1936.)

[fol. 51] Doc. No. 12199.

STATE OF NEW JERSEY

COURT OF ERRORS AND APPEALS, FEBRUARY TERM, 1937

Appeal from Supreme Court

No. 10 of February Term, 1937

AARON GORDON, Respondent,

and

CHARLES F. BLACKTON, Appellant

Date: Apr. 30, 1937.

The Chancellor, Presiding

Opinion by Below

Check List	Affirm	Reversal	Modify
The Chancellor	1	...	...
" Chief Justice	1	...	...
Mr. Justice Parker	1	...	...
" " Lloyd	1	...	...
" " Case	1	...	...
" " Bodine	1	...	...
" " Donges	1	...	...
Judge Hetfield	1	...	...
" Dear	1	...	...
" Wells	1	...	...
" WolfsKeil	1	...	...
" Rafferty	1	...	...
" Cole	1	...	...
	—	—	—
Totals	...	...	...

Endorsed: "Filed Apr. 30, 1937. Thomas A. Mathis, Clerk."

[fol. 52] NEW JERSEY COURT OF ERRORS AND APPEALS,
FEBRUARY TERM, 1937

No. 10

AARON GORDON, Respondent,

vs.

CHARLES F. BLACKTON, Appellant

Appeal from Supreme Court

Per CURIAM:

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Trenchard in the Supreme Court, reported in 117 N. J. L. 40.

Endorsed: "Filed Apr. 30, 1937. Thomas A. Mathis, Clerk."

[fol. 53] [Endorsed:] 9141. No. 10, February Term, 1937. New Jersey Court of Errors and Appeals. Aaron Gordon, Respondent, — Charles F. Blackton, Appellant. Per Curiam.

[fol. 54] NEW JERSEY COURT OF ERRORS AND APPEALS,
FEBRUARY TERM, 1937

No. 10

Between

AARON GORDON, Respondent,

vs.

CHARLES F. BLACKTON, Appellant

On Appeal from Supreme Court.

Order on Affirmance of Judgment

This cause having been duly argued at the February Term, 1937 of this court by Collins and Corbin, Edward A. Markley, of counsel for the appellant and Aaron Gordon

and John W. Ockford, of counsel for the respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court—

It is thereupon, on this thirtieth day of April in the year of our Lord one thousand nine hundred thirty-seven, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

Aaron Gordon, Attorney for Respondent.

[Endorsed:] New Jersey Court of Errors and Appeals, February Term, 1937. Aaron Gordon, vs. Charles F. Blackton. On Appeal from Supreme Court. Order Affirming Judgment. Aaron Gordon, Att'y. Filed May 6, 1937. Thomas A. Mathis, Clerk.

[fol. 55] STATE OF NEW JERSEY

[Seal]

COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

I, Thomas A. Mathis, Secretary of State of the State of New Jersey and Ex-Officio Clerk of the Court of Errors and Appeals, do hereby certify, that the foregoing is a true copy of the Transcript of the Proceedings, Check List, Per Curiam Opinion and Order of Affirmance of Judgment in the case of Aaron Gordon, Respondent vs. Charles F. Blackton, Appellant, as the same is taken from the originals on file in my office.

Witness my hand and seal of said Court, this fourth day of June, A. D., 1937.

Thomas A. Mathis, Clerk. (Seal of the Secretary of the State of New Jersey.

[fol. 56] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1937

The petition herein for a writ of certiorari to the Court of Errors and Appeals of the State of New Jersey is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

Endorsed on cover: File No. 41,648. New Jersey Court of Errors and Appeals. Term No. 167. Charles F. Blackton, petitioner, vs. Aaron Gordon. Petition for a writ of certiorari and exhibit thereto. Filed June 23, 1937. Term No. 167, O. T., 1937.

(1948)